

"Sample"

Substance Abuse Program

Purpose - To Provide a safe, drug free workplace for all employees.

Policy

It is the policy of (company name) to prohibit the unauthorized possession, use or presence of, or the sale, transfer, or being under the influence of drugs or alcohol on company property.

A healthy and productive workforce, safe working conditions free from the effects of drugs and alcohol, and the maintenance of the quality of our products are the utmost importance to the company and to all of us.

The abuse of drugs and alcohol causes increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of products produced.

The following procedures set forth a fair and equitable testing program for drugs and alcohol in the work place. These procedures are hereby adopted for all company employees.

Procedure - Definitions

1. Alcohol - ethyl alcohol or ethanol.

2. Drug paraphernalia - including objects used to manufacture, compound, convert, produce, process, prepare, test, and analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce a drug into the human body.

3. Screen tests - any test for drugs or alcohol utilizing testing of body fluids (blood, urine, hair, etc.) to detect a number of physical conditions, including the presence of drugs and/or alcohol. Qualitative tests determine the presence of drugs and/or alcohol; Quantitative tests determine the amount present.

4. Drugs - Any substance recognized as a drug in the United States Pharmacopoeia, the National Formulary, the Homeopathic Pharmacopoeia, or other drug compendia, or supplement to any of these compendia.

Testing

The (company name) reserves the right to conduct or require screen tests on any employee who is on company premises, engaged in company business, operating company equipment, or on applicants for employment, unless prohibited by applicable law.

Screen-Testing will occur:

- a. As part of an industrial accident investigation. Any employee involved in an industrial accident will be asked to submit to a drug screen.
- b. As a result of a perceived change or observed impairment in job performance.
- c. On any employee who is perceived to be under the influence of drugs or alcohol. The employee may be removed from service and requested to undergo evaluation and appropriate testing by medical personnel. Management may take disciplinary action on the basis of the medical information obtained. Refusal by the employee to undergo evaluation and testing will be considered cause for discharge. The personnel department is to be notified prior to any action being taken.
- d. As part of pre-employment testing.

Screen tests may be conducted as a regular part of the pre-employment examination for full-time and part-time applicants. Applicants may be asked at the time of application to agree to a physical examination and screen test. Refusal to give written consent will stop further action towards employment.

- e. Random screen testing may be performed as part of a Reinstatement Agreement.

Positive Screen Test

A positive screen test shall mean either the presence of a drug or alcohol. Sample testing procedures shall conform to scientifically accepted analytical methods and procedures and shall include verification of confirmation of any positive test result by gas chromatography-mass spectroscopy, or other comparably reliable analytical method, before the results of any test may be used as a basis for any action.

a. 1st Offense

When a screen test is positive for the 1st time but no evidence of drug or alcohol use on the job exists, the employee will be suspended without pay until all company required testing and treatment is completed. The employee will be required to obtain a written evaluation for drug abuse from a recognized professional and/or institution (at the employees expense). If there is evidence of drug or alcohol use on the job, the employee may be disciplined or discharged and not be eligible for reinstatement.

b. Reinstatement

To be reinstated to a job, an employee must have a signed release from a doctor stating that they are fit for work. The employee must submit to another screen test and have a negative result within six weeks from the date they were suspended, otherwise the employee will be discharged. Before the employee returns to work, they will be required to sign a Condition of Reinstatement Agreement and random drug screening will be conducted for 1 year.

c. 2nd Offense

An employee who has been suspended for a positive drug test and allowed to return to work will be discharged for any subsequent positive drug screen.

d. Consequences of Test Refusal

1. Prospective employee: Refusal to give written consent for a drug screening test will terminate further action towards employment.

2. Employee: Refusal by an employee to submit to screen testing will be considered cause for discharge.

Substance Abuse Policy

(Removal from service)

Purpose:

To provide supervisors with guidelines and procedures to be followed in the event that an employee is believed to be unfit for duty.

Application:

All employees

Policy

It is the intention of (company name) to provide a safe workplace. All employees must be fit for duty when reporting to work and at all times while performing their work assignments.

1. Removal from Service may result from:

a. Impairment - must be observed and documented by two Qualified Persons, one being the supervisor and the other being the Department Manager or Key Executive.

b. An Industrial Accident.

2. Employee must be transported to the designated medical facility, by a member of Management for testing. Employee must sign a consent form agreeing or refusal to be tested for drugs and/or alcohol. Forms are available from management.

- a. If the employee is injured or impaired in such a way that they cannot sign a consent/refusal form, the form can be taken to the medical facility to be signed as soon as possible.
 - b. If the drug screen cannot be immediately administered at the medical facility due to the condition of the employee, the physician in charge will be informed of the testing policy. Collecting the sample for the drug screen will be at the physicians discretion.
3. Employee must undergo a medical evaluation which will include a blood/urine/hair test for drugs and/or alcohol and a physical examination by medical staff.
4. Employee will be suspended from work pending receipt of results of lab tests within 48 hours unless:
- a. The physician clearly states that the employee is fit for duty following a Fitness for Duty Examination.
 - b. He/she is released by the physician following an industrial accident. The release should state that the employee is fit for duty.
5. If, after the medical evaluation, the employee is considered to be impaired, the management representative will transport the employee home and release them into the care of a family member.

6. If the drug/alcohol screen results are positive, follow company policy.

7. If the drug/alcohol screen is negative, and:

a. Evidence of work-related cause is found, refer employee to _____ for treatment.

b. Cause is medical but not work-related, refer the employee to their personal physician for care and have them obtain a fit for duty work-release.

c. Cause is unknown, refer the employee to their personal physician and have them obtain a fit for duty work-release.

AT THIS POINT, FOLLOW NORMAL PROCEDURES

CONDITION OF REINSTATEMENT

I understand that my reinstatement to employment by (company name) is conditioned upon and subject to my satisfactorily fulfilling the following terms:

1. Contacting the drug referral center, (physicians name) my personal physician, or a specialist of my choice for an evaluation at my expense. Obtaining a written drug or alcohol evaluation.
2. Securing a doctor's release to return to work or requesting a leave of absence for treatment. Regular medical, leave of absence policies will be followed.
3. Following reinstatement, I hereby agree to submit to screen tests for drug or alcohol use on a periodic or random basis. If these tests show the presence of drugs or alcohol, I understand and agree that I shall be discharged immediately.
4. I understand that upon my return to employment, I am required to meet all of _____ established standards of conduct and job performance, and that I will be subject to _____: disciplinary procedures for failure to meet such standards.
5. I understand that my failure to meet any of the above requirements will result in my immediate discharge.
6. Nothing contained herein shall be construed as a waiver of _____ right to take normal disciplinary actions against me under existing policies and procedures for unsatisfactory work performance or misconduct. My use of or treatment for use of alcohol or controlled substances shall not constitute a mitigating circumstance.

Dated this _____ day of _____, 199__.

Signed:

EMPLOYEE (signature) WITNESS

EMPLOYEE (print name)

EMPLOYEE/APPLICANT CONSENT FORM

**PHYSICAL EXAMINATION AND TEST
CONTROLLED SUBSTANCES (DRUGS) AND/OR ALCOHOL
(CONFIDENTIAL)**

EMPLOYEE/APPLICANT NAME (print) Social Security Number

I hereby voluntarily consent to a physical examination and tests to be conducted by company designated physicians and/or other appropriate medical personnel contracted to perform this service by the Company. I specifically voluntarily consent to the taking of samples of my blood, urine, hair, breath and other samples for testing to determine the presence of drugs and/or alcohol in my system. I voluntarily authorize the release of medical information concerning the results of my physical examination and tests to company representatives who will use it to determine if I am in compliance with company work rules and policies on drugs and/or alcohol. I understand that I am entitled to a copy of this authorization. I also understand that refusal by me to sign this consent will be cause for discharge or ineligibility for employment. This authorization shall remain valid for a period of one year from the date shown below for new applicants, and at all times during the period of employment for existing employees.

EMPLOYEE/APPLICANT SIGNATURE DATE SIGNATURE OF WITNESS

**EMPLOYEE/APPLICANT
REFUSAL FORM**

**PHYSICAL EXAMINATION AND TEST
CONTROLLED SUBSTANCES (DRUGS) AND/OR ALCOHOL**

I decline to authorize the company to perform a physical examination and tests for drugs and/or alcohol or

the release of results to Company representatives. I understand that I am entitled to a copy of this refusal. I also understand that refusal by me to sign this consent will be cause for discharge or ineligibility for employment.

EMPLOYEE/APPLICANT SIGNATURE DATE SIGNATURE OF WITNESS

CHAPTER 38; Utah Code

DRUG AND ALCOHOL TESTING

Section

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34-38-1. Legislative findings - Purpose and intent of chapter.

The Legislature finds that a healthy and productive work force, safe working conditions free from the effects of drugs and alcohol, and maintenance of the quality of products produced and services rendered in this state, are important to employers, employees, and the general public. The Legislature further finds that the abuse of drugs and alcohol creates a variety of workplace problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services.

Therefore, in balancing the interests of employers, employees, and the welfare of the general public, the Legislature finds that fair and equitable testing for drugs and alcohol in the workplace, in accordance with this chapter, is in the best interest of all parties.

The Legislature does not intend to prohibit any employee from seeking damages or job reinstatement, if action was taken by his employer based on a false drug or alcohol test result.

34-38-2. Definitions. For purposes of this chapter:

- (1) "Alcohol" means ethyl alcohol or ethanol.
- (2) "Drugs" means any substance recognized as a drug in the United States Pharmacopoeia, the National Formulary, the Homeopathic Pharmacopoeia, or other drug compendia, or supplement to any of those compendia.
- (3) "Employer" means any person, firm, or corporation, including any public utility or transit district, which has one or more workers or operators employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written. "Employer" does not include the federal or state government, or other local political subdivisions.
- (4) "Employee" means any person in the service of an employer, as defined by Subsection (3), for compensation.
- (5) "Prospective employee" means any person who has made application to an employer, whether written or oral, to become his employee.
- (6) "Sample" means urine, blood, breath, saliva, or hair.

34-38-3. Testing for drugs or alcohol.

It is not unlawful for an employer to test employees or prospective employees for the presence of drugs or alcohol, in accordance with the provisions of this chapter, as a condition of hiring or continued employment. However, employers and management in general must submit to the testing themselves on a periodic basis.

34-38-4. Samples - Identification and collection.

In order to test reliably for the presence of drugs or alcohol, an employer may require samples from his employees and prospective employees, and may require presentation of reliable identification to the person collecting the samples. Collection of the sample shall be in conformance with the requirements of Section 34-38-6. The employer may designate the type of sample to be used for testing.

34-38-5. Time of testing - Cost of testing and transportation.

- (1) Any drug or alcohol testing by an employer shall occur during or immediately after the regular work period of current employees and shall be deemed work time for purposes of compensation and benefits for current employees.
- (2) An employer shall pay all costs of testing for drugs or alcohol required by the employer, including the cost of transportation if the testing of a current employee is conducted at a place other than the workplace.

34-38-6. Requirements for collection and testing.

All sample collection and testing for drugs and alcohol under this chapter shall be performed in accordance with the following conditions:

- (1) The collection of samples shall be performed under reasonable and sanitary conditions;
- (2) Samples shall be collected and tested with due regard to the privacy of the individual being tested, and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;
- (3) Sample collection shall be documented, and the documentation procedures shall include:

- (a) labeling of samples so as reasonably to preclude the probability of erroneous identification of test results; and
- (b) an opportunity for the employee or prospective employee to provide notification of any information which he considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant medical information.
- (4) Sample collection, storage, and transportation to the place of testing shall be performed so as reasonably to preclude the probability of sample contamination or adulteration; and
- (5) Sample testing shall conform to scientifically accepted analytical methods and procedures. Testing shall include verification or confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical method, before the result of any test may be used as a basis for any action by an employer under Section 34-38-8.

34-38-7. Employer's written testing policy - Purposes and requirements for collection and testing - Employer's use of test results.

- (1) Testing or retesting for the presence of drugs or alcohol by an employer shall be carried out within the terms of a written policy which has been distributed to employees and is available for review by prospective employees.
- (2) Within the terms of his written policy, an employer may require the collection and testing of samples for the following purposes:
 - (a) investigation of possible individual employee impairment;
 - (b) investigation of accidents in the workplace or incidents of workplace theft;
 - (c) maintenance of safety for employees or the general public; or
 - (d) maintenance of productivity, quality of products or services, or security of property or information.
- (3) The collection and testing of samples shall be conducted in accordance with Sections 34-38-4, 34-38-5, and 34-38-6, and need not be limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee.

(4) The employer's use and disposition of all drug or alcohol test results are subject to the limitations of Sections 34-38-8 and 34-38-13.

34-38-8. Employer's disciplinary or rehabilitative actions.

Upon receipt of a verified or confirmed positive drug or alcohol test result which indicates a violation of the employer's written policy, or upon the refusal of an employee or prospective employee to provide a sample, an employer may use that test result or refusal as the basis for disciplinary or rehabilitative actions, which may include the following:

- (1) a requirement that the employee enroll in an employer-approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, as a condition of continued employment;
- (2) suspension of the employee with or without pay for a period of time;
- (3) termination of employment;
- (4) refusal to hire a prospective employee; or
- (5) other disciplinary measures in conformance with the employer's usual procedures, including any collective bargaining agreement.

34-38-9. No cause of action arises for failure to test or detect substance or problem, or for termination of testing program.

No cause of action arises in favor of any person against an employer who has established a policy and initiated a testing program in accordance with this chapter, for any of the following:

- (1) failure to test for drugs or alcohol, or failure to test for a specific drug or other substance;
- (2) failure to test for, or if tested for, failure to detect, any specific drug or other substance, disease, infectious agent, virus, or other physical abnormality, problem, or defect of any kind; or
- (3) termination or suspension of any drug or alcohol testing program or policy.

34-38-10. No cause of action arises against employer unless false test result - Presumption and limitation of damages in claim against employer.

- (1) No cause of action arises in favor of any person against an employer who has established a program of drug or alcohol testing in accordance with this chapter, and who has taken any action under Section 34-38-8, unless the employer's action was based on a false test result.
- (2) In any claim, including a claim under Section 34-38-11, where it is alleged that an employer's action was based on a false test result:
 - (a) there is a rebuttable presumption that the test result was valid if the employer complied with the provisions of Section 34-38-6; and
 - (b) the employer is not liable for monetary damages if his reliance on a false test result was reasonable and in good faith.

34-38-11. Bases for cause of action for defamation, libel, slander, or damage to reputation.

No cause of action for defamation of character, libel, slander, or damage to reputation arises in favor of any person against an employer who has established a program of drug or alcohol testing in accordance with this chapter, unless:

- (1) the results of that test were disclosed to any person other than the employer, an authorized employee

or agent of the employer, the tested employee, or the tested prospective employee;

(2) the information disclosed was based on a false test result;

(3) the false test result was disclosed with malice; and

(4) all elements of an action for defamation of character, libel, slander, or damage to reputation as established by statute or common law, are satisfied.

34-38-12. No cause of action arises based on failure of employer to establish testing program.

No cause of action arises in favor of any person based upon the failure of an employer to establish a program or policy of drug or alcohol testing.

34-38-13. Confidentiality of information.

(1) All information, interviews, reports, statements, memoranda, or test results received by the employer through his drug or alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in a proceeding related to an action taken by an employer under Section 34-38-8 or an action under Section 34-38-11.

(2) The information described in Subsection (1) shall be the property of the employer.

(3) An employer is entitled to use a drug or alcohol test result as a basis for action under Section 34-38-8.

(4) An employer may not be examined as a witness with regard to the information described in Subsection (1), except in a proceeding related to an action taken by the employer under Section 34-38-8 or an action under Section 34-38-11.

34-38-14. Employee not "handicapped."

An employee or prospective employee whose drug or alcohol test results are verified or confirmed as positive in accordance with the provisions of this chapter shall not, by virtue of those results alone, be defined as a person with a "handicap" for purposes of Title 34, Chapter 35, the Utah Anti-Discriminatory Act.

34-38-15. No physician-patient relationship created.

A physician-patient relationship is not created between an employee or prospective employee, and the employer or any person performing the test, solely by the establishment of a drug or alcohol testing program in the workplace.